

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

UNITED STATES OF AMERICA	*	
	*	
v.	*	CR 612-018
	*	
TELLAS LEVALLAS KENNEDY	*	

O R D E R

In the captioned criminal matter, Defendant Tellas Kennedy has filed a motion to correct his Judgment and Commitment Order. Citing Federal Rule of Criminal Procedure 36, Kennedy argues that he was improperly sentenced. More particularly, Kennedy complains that the four-level enhancement to his criminal offense level under U.S.S.G. § 3B1.1 was inappropriate since he was not charged as a leader in the indictment.

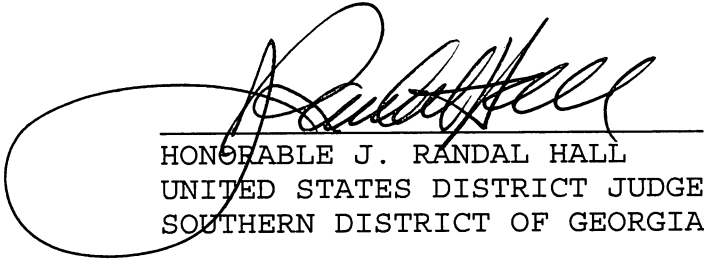
Rule 36 allows a court to correct "a clerical error" in a judgment. A clerical error, however, is a "minor uncontroversial error[]." United States v. Portillo, 363 F.3d 1161, 1164 (11th Cir. 2004). The rule may not be used "to make a substantive alteration to a criminal sentence." United States v. Pease, 331 F.3d 809, 816 (11th Cir. 2003). Here, Kennedy is asking the Court to make a substantive change to his sentence. He essentially challenges the legality of his sentence, which must be done through a motion to vacate, set

aside, or correct a sentence under 28 U.S.C. § 2255. Otherwise, a district court cannot modify a sentence once it has been imposed except under three very limited circumstances, none of which apply here. See 18 U.S.C. § 3582(c).

The problem for Kennedy is that he has already filed a § 2255 motion, which has been denied by this Court. Thus, in order for him to bring another § 2255 motion, Kennedy must move the Eleventh Circuit Court of Appeals for an order authorizing this Court to consider a second or successive § 2255 motion. See 28 U.S.C. §§ 2255, 2244(b)(3). Until Kennedy acquires the necessary authorization to bring a successive § 2255 motion from the Court of Appeals, this Court does not have jurisdiction to consider the merits of his claim.

Upon the foregoing, Kennedy's motion to correct judgment (doc. 1260) is **DENIED**.

ORDER ENTERED at Augusta, Georgia, this 30th day of August, 2016.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA